Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint PCS and AT&T Petitions for	)	WT Docket No. 01-316
Declaratory Rulings on CMRS	)	
Access Charge Issues	)	
	)	

WORLDCOM COMMENTS

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I. Introduction & Summary.

Sprint PCS and AT&T have sought declaratory rulings on the legal status of CMRS access charges. It is clear that federal law does not allow CMRS providers to impose access charges on IXCs. Only this Commission could approve such imposition. It never has. Meanwhile, the industry has developed a mature pricing structure in which end users pay directly for their use of wireless networks. CMRS subscribers pay "airtime" charges. Those charges apply irrespective of whether they originate or receive calls and without regard to the network provider of the party at the other end. As AT&T has shown, under this pricing structure, CMRS providers and IXCs interconnect on a *de facto* "bill-and-keep" basis.

In these comments, WorldCom, Inc. (WorldCom) demonstrates that federal law does not allow Sprint PCS or other CMRS providers to impose access charges on IXCs. We further substantiate AT&T's claim that, as a practical matter, the industry has recognized that bill-and-keep is the only lawful mechanism to govern the exchange of this traffic. We show that there is no public policy justification for supplanting this stable bill-and-keep mechanism with a new access charge regime that would serve only to harm competition in wireless and interexchange markets. Finally, if the Commission imprudently allows CMRS providers to impose such charges, they must be capped at the level of the corresponding rates for reciprocal compensation and must apply only prospectively.

II. Federal law does not allow CMRS providers to impose "access charges" on IXCs.

Sprint PCS' claim that no federal law or policy bars it from recovering "call termination costs"[1] from AT&T rests on a series of Commission decisions that do not address the factual circumstances of this case. In the only instance in which the Commission addressed the relevant facts, it recognized that existing policy did not authorize the imposition of access charges. A review of the facts and applicable decisions will expose the speciousness of Sprint PCS' argument.

At the outset it is important to note that this controversy has nothing to do with circumstances in which a CMRS provider such as Sprint PCS is directly interconnected with an IXC such as AT&T. Sprint PCS is free to offer all manner of directly interconnected access services to IXCs, which are free to accept or reject such offers based on their utility and reasonableness. Such charges would not be "imposed." Instead, the IXC would agree to them voluntarily. This controversy relates only to situations in which Sprint PCS interconnects indirectly with AT&T and other IXCs. The networks of both carriers are connected to an ILEC tandem switch. In these circumstances, Sprint PCS could, theoretically, impose access charges on AT&T and

[1] Sprint PCS Petition at 7.

other IXCs if the Commission approved such a practice.[2] The Commission has never done so.

Sprint PCS argues that by not subjecting CMRS to price regulation and by ordering CMRS providers not to file interstate access tariffs, the Commission has, in effect, authorized companies such as Sprint PCS to impose access charges on IXCs.[3] This *non sequitur* finds no support in the Commission's decisions.

The Commission has on only one occasion addressed the question of whether CMRS providers may impose access charges on IXCs with which they interconnect indirectly via ILEC tandem switches. At that time, the Commission stated:

> We have never addressed, however, whether LECs or IXCs should remit any interstate access charges to CMRS providers when the LEC and CMRS provider jointly provide access service. For example, when a cellular customer places a long-distance call, the cellular carrier typically transmits the call to the LEC, which connects the call to the IXC. Similarly when long-distance calls are placed to cellular customers, the IXC handling the call typically transmits the call to the LEC, which in turn hands the call to the cellular carrier for termination to the called party. We have not previously established specific rules or guidelines applicable to the joint provision of interstate access service by a LEC and a CMRS provider. Until CMRS providers generate sufficient traffic to warrant direct connection to IXC points of presence, we believe that most CMRS providers are likely to depend on LECs for interconnection of interexchange traffic to IXCs. Thus, we tentatively conclude that it will be necessary to apply certain protections to such interconnection arrangements, at least in the foreseeable future.[4]

The Commission went on to conclude tentatively that CMRS providers should be entitled to recover access charges from IXCs in these circumstances. The Commission sought comment on how to implement its conclusions, assuming that they reached the stage of

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[2] The Commission's recent experience with unreasonable CLEC access charge practices in analogous circumstances demonstrates the extent of the market power held by an indirectly interconnected carrier that is authorized to impose access charges. *See, e.g., In the Matter of Access Charge Reform,* Seventh Report and Order, 16 FCC Rcd 9923 (2001).

[3] Sprint PCS Petition at 5-7.

[4] *LEC/CMRS Interconnection NPRM,* 11 FCC Rcd 5020, 5074-5075, ¶ 115 (1995).

final rules. Ultimately, the Commission never reached a final conclusion and never completed rules that would entitle CMRS providers to recover access charges in these circumstances. The fact that the Commission was proceeding with an NPRM is persuasive evidence that it believed at the time that a rule change would be needed to authorize access charges in these circumstances. Since no rule change was adopted, the wireless industry maintained a pricing structure that did not depend on compensation from IXCs for origination or termination of interexchange traffic.

Sprint PCS avoids the fact that the Commission simply never got around to approving the application of access charges by CMRS providers on indirectly interconnected IXCs, by citing Commission statements that address other issues. Significantly, all of those statements were made prior to the *LEC/CMRS Interconnection NPRM.* The Commission was aware of all of them when it stated that it had never addressed whether IXCs should remit access charges to CMRS providers with which they interconnect indirectly. Accordingly, the Commission necessarily viewed those earlier statements as addressing other matters.

Sprint PCS relies primarily on a single statement in the *CMRS Equal Access/Interconnection NPRM.*[5] Therein, the Commission observed that it had forborne from tariff filing requirements for CMRS interstate access services, but noted that it had previously stated that cellular carriers were entitled to just and reasonable compensation for their provision of access.[6] However, the earlier statement cited by the Commission, and implicitly relied on by Sprint PCS, has nothing to do with any facts relevant to this controversy.

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[5] Sprint PCS Petition at 6, *citing* 9 FCC Rcd 5408, (1994).
[6] *Id.* at 5447, ¶ 93, *citing Interconnection Order,* 2 FCC Rcd 2910, 2915 (1987).

The 1987 *Interconnection Order* is utterly silent on the relationship between CMRS providers and IXCs. That order addresses instead a series of issues related to interconnection between CMRS providers and LECs, including, for example, Type 1 and Type 2 interconnection, and the allocation and assignment of NXX codes. What the Commission in fact said in that order was: "we believe that the principle of mutual switching compensation should apply to Type 2 but not Type 1 service. Cellular carriers and telephone companies are equally entitled to just and reasonable compensation for their provision of access, whether through tariff or by a division of revenues agreement."[7] The Commission was clearly describing interconnection between cellular carriers and LECs. In this context, "access" could not have referred to the interexchange access that IXCs must purchase from LECs. After all, the Bell Operating Companies, by far the pre-dominant LECs with which cellular carriers interconnected, were prohibited from providing most interexchange services, and thus would have had little use for cellular interexchange access services.

Sprint PCS also questions whether the Commission has the legal authority to prohibit it from imposing access charges on IXCs, given the Commission's decision not to regulate CMRS prices.[8] However, the Commission's decision to detariff CMRS services must be read in the context of its later statement that it had *never* addressed whether IXCs should remit access charges to CMRS providers with which they interconnect indirectly. Seen in that light, it is apparent that the detariffing mandate reaches only those CMRS access services that are provided directly to the purchasing carrier, not those that might be provided jointly via an ILEC tandem switch. This, of

[7] *Interconnection Order,* 2 FCC Rcd 2910 2915, ¶ 47 (1987).
[8] Sprint PCS Petition at 6.

course, makes sense, since it is only when the carriers are indirectly interconnected that a CMRS provider could "impose" an access service on an IXC. If the service were offered via a direct connection, the IXC could simply weigh the costs and benefits and determine whether or not to subscribe.

Sprint PCS then tries to turn history on its head by arguing that it is only because of the refusal by IXCs to pay access charges to CMRS providers, that CMRS providers were "compelled" to charge mobile customers for incoming calls.[9] There is no evidence whatsoever for this curious assertion. As far as WorldCom is aware, prior to 1999 no wireless carrier had ever sought access charges from IXCs. Sprint PCS' claim that the Commission has already rejected the argument that CMRS providers neither expect nor require interexchange access payments, must fail for the simple reason that the Commission has never addressed it.

According to Sprint PCS, in the *Cellular Interconnection Reconsideration Order,* the Commission rejected the argument that CMRS providers should recover whatever termination costs they incur from their own subscribers, and not from IXCs.[10] What the Commission in fact rejected was the argument that mutual compensation arrangements between directly interconnected co-carriers were unnecessary because cellular operators recover their costs from subscribers.[11] In other words, the Commission did little more than to reiterate the decision it had reached two years earlier, i.e., that cellular providers are entitled to mutual compensation when they exchange traffic with LECs. This unremarkable conclusion is not germane to the present controversy.

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[9] *Id.*
[10] *Id.* at 7.
[11] 4 FCC Rcd 2369, 2373 ¶ 27 (1989).

Sprint PCS has failed to show that the charges it seeks to impose on AT&T are permissible under federal law or Commission policy. It is clear the Commission has never approved of the imposition of access charges by CMRS providers on IXCs with which they interconnect indirectly. Nor should it.

III. By its actions, the wireless industry has implicitly acknowledged that traffic is exchanged with IXCs on a *de facto* bill-and-keep basis.

In its petition, AT&T demonstrates that IXCs and CMRS providers exchange traffic on a bill-and-keep basis. It is indisputably true that this is the case, as we further show here.

WorldCom exchanges traffic with literally hundreds of CMRS providers. Prior to April 1999, when Sprint PCS first sent a bill to WorldCom, not a single one of those providers tried to impose access charges on WorldCom. Sprint PCS claims in its petition that WorldCom was encouraged by AT&T's action to refuse to pay wireless access charges. In fact, until quite recently WorldCom had no knowledge of AT&T's action. WorldCom has disputed the validity of all access charges billed to it by Sprint PCS, including charges that were paid inadvertently. Since 1999, of the hundreds of wireless carriers with which WorldCom exchanges traffic, only two additional carriers have attempted to bill WorldCom for access services.

It strains credulity to believe, as Sprint PCS suggests, that the wireless industry has always been entitled to impose access charges on IXCs, but has simply not gotten around to it until recently. The suggestion becomes laughable when one considers the amount of revenue the wireless industry would have let fall on the floor if this were the case. WorldCom estimates that the IXC industry exchanges at least 2 billion minutes per month with CMRS providers.[12] At the rates billed by Sprint PCS, these minutes would yield more than $800 million per year in revenue for CMRS providers if the charges were lawful.

It is absurd to believe that the wireless industry has, whether through ignorance or negligence, willingly foregone close to a billion dollars in potential annual revenue. It has not. Up until now, wireless carriers, by their actions, have recognized that they exchange traffic with IXCs on a bill-and-keep basis. Of course, if Sprint PCS succeeds in this action, other wireless providers will quickly follow suit – to the detriment of competition in interexchange and wireless markets.

IV. The extension of interexchange access charges to CMRS providers would harm competition in both markets.

Vigorous competition in the wireless industry has developed because wireless providers compete head-to-head for end users. Direct competition for end users has resulted in behavior characterized by offers of increasingly large buckets of airtime minutes at diminishing prices. The approval by this Commission of the imposition of access charges on IXCs would profoundly, and negatively, affect this heretofore, fairly robust competition.

If wireless carriers could obtain revenue not by adding subscribers, but simply by maximizing the exchange of traffic with IXCs, wireless competition would suffer. CMRS providers would cross-subsidize their end user rates with revenues obtained from their unwilling IXC customers. Such cross-subsidies would, of course, prove disastrous

[12] This does not even include toll minutes originated on CMRS networks. For example, Sprint PCS undoubtedly originates a significant amount of toll calling that is carried by the Sprint long distance network.

for CMRS competition. Those companies would succeed that are best at generating access minutes, and not necessarily those that are best at satisfying end user customers. This inexorable fact would create incentives for wireless companies to engage in the same types of dubious practices that CLECs have, in some cases, adopted to maximize access revenues. For example, some wireless providers might offer “commission plans” for end users to stimulate access minutes. Such practices would not only harm wireless competition, but would also harm interexchange competition.

The imposition of wireless access charges would significantly increase the costs of providing interexchange service. As noted above, WorldCom estimates that such charges could amount to nearly a billion dollars per year. Moreover, if wireless carriers had the incentive to stimulate these minutes, they would likely increase and thus result in even greater potential cost to IXCs and their customers. Given the highly competitive nature of the long distance business, it is inevitable that wireless access charges would entail higher long distance prices for consumers.

Since these charges would inevitably harm competition in wireless and interexchange markets, there is no justification for disturbing the status quo. As AT&T suggests, the industry has evolved a stable bill-and-keep approach.[13] The Commission should simply confirm that such an approach is lawful and has the Commission’s approval.

V. If the Commission allows CMRS access charges, they should be capped at the level of reciprocal compensation payments, and should apply only prospectively.

[13] AT&T Petition at 2.

As AT&T demonstrates, even if the Commission allows CMRS providers to impose access charges on IXCs, those charges must be capped at the level of reciprocal compensation and should apply only on a prospective basis.[14]

Because of historical factors related to universal service and other issues, there may, at one time, have been some basis for allowing LECs to impose access charges that exceed long-run incremental costs.[15] None of those factors apply in the context of CMRS providers. Wireless carriers have never depended on universal service subsidies. Accordingly, there are no risks associated with capping CMRS access charges at the level of reciprocal compensation rates. Indeed, as detailed above, by allowing charges that exceed those cost-based rates, the Commission would negatively affect competition in wireless and interexchange markets.

Moreover, insofar as the Commission allows CMRS access charges, it must do so only prospectively. Otherwise Sprint PCS will receive an unjustified windfall, and IXCs will be forced to pay amounts that they cannot recover from subscribers.

As shown above, the vast majority of wireless carriers have never attempted to impose access charges on IXCs. Indeed, it is clear that the entire industry has adapted to the *de facto* bill-and-keep arrangement described above. In these circumstances, to transfer more than $100 million from IXCs to Sprint PCS would amount to an unjustified windfall for Sprint PCS. Other wireless providers would obtain nothing simply because they did not foresee that the Commission would allow these novel charges.

In addition, IXCs would have no reasonable opportunity to recover these significant amounts from their subscribers. Those subscribers have already paid for the

[14] *Id.* at 20.
[15] *See Id.* at 5-10 for a discussion of those factors.

interexchange services involved here. They did so at a time when prices for interexchange services were based in part on the time-tested assumption that no access charges would be paid to wireless providers. Accordingly, such charges were not included in IXC pricing structures. IXCs cannot now go back to those customers and request supplemental payments to cover this new liability.

VI. Conclusion

Sprint PCS has asked this Commission to disturb a perfectly fair and stable mechanism for the exchange of traffic between wireless carriers and IXCs with which they interconnect indirectly. As shown above, their request is unsupported by law or policy. The introduction of access charges would severely harm competition in CMRS and interexchange markets. The Commission should refuse to authorize these charges, and should specifically approve of the *de facto* bill-and-keep approach that industry has developed and maintained. If the Commission instead decides to authorize CMRS providers to impose these charges on IXCs, it must do so only prospectively and should cap them at the level of reciprocal compensation.

Respectfully submitted,

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/s/

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